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VIA HAND DELIVERY

EX PARTE OR LATE FILED

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

EX PARTE

Re: Docket CC No. 94-54

RECEIVED  
DEC - 7 1995  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Mr. Caton:

This letter reports that from December 4 through 6, 1995 Alexander Netchvolodoff and Alexandra Wilson of Cox Enterprises, Inc. had meetings with the following Commission personnel: Richard Welch, Legal Advisor to Commissioner Chong; Lisa Smith and Todd Silbergeld, Legal Advisors to Commissioner Barrett; Lauren Belvin, Senior Legal Advisor to Commissioner Quello; John Nakahata, Special Assistant to Chairman Reed Hundt; Michele Farquhar, Chief, Wireless Telecommunications Bureau and Regina Keeney, Chief, Common Carrier Bureau advocating the adoption of an interim rule of "bill and keep" as a compensation mechanism to govern LEC-to-CMRS interconnection. Cox explained that there has been sufficient notice to adopt an interim rule, and Cox attaches a memorandum supporting this conclusion.

If you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



Laura H. Phillips

Counsel for Cox Enterprises, Inc.

LHP/css

Enclosure

cc (w/encl.): Regina Keeney, Esq.  
Michele Farquhar, Esq.  
John Nakahata, Esq.  
Richard Welch, Esq.  
Lisa Smith, Esq.  
Todd Silbergeld, Esq.  
Lauren Belvin, Esq.

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## M E M O R A N D U M

December 7, 1995  
Docket CC No. 94-54

### **THE COMMISSION HAS AN ADEQUATE RECORD TO ADOPT AN INTERIM "BILL AND KEEP" LEC-TO-CMRS INTERCONNECTION RULE**

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The Commission is not required to issue a Further Notice of Proposed Rulemaking to adopt on an interim basis LEC-to-CMRS interconnection proposals. Both the CMRS Regulatory Parity Rulemaking (GN Docket 93-252) and the CMRS Interconnection Rulemaking (CC Docket No. 94-54) solicited comment on alternatives to existing cellular arrangements for LEC-to-CMRS interconnection. The record in those proceedings fully supports adoption of a "bill and keep" requirement on an interim basis while the Commission explores a permanent interconnection solution.

#### **THE "LOGICAL OUTGROWTH" TEST:**

The Administrative Procedures Act ("APA") requires an agency to notify the public of proposed changes in rules by (1) disclosing "either the terms or substance of the proposed rule or a description of the subjects and issues involved;" and (2) giving "interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments. . . ."

The courts have adopted a "logical outgrowth" test to determine whether re-notice and a subsequent round of comments is necessary. The logical outgrowth test asks whether the petitioner "should have anticipated that such a requirement might be imposed." A rule will be deemed to be the "logical outgrowth" of an NPRM if a new round of notice and comment would not provide commenters with "their first occasion to offer new and different criticism which the agency might find convincing."

#### **ADOPTION OF INTERIM BILL AND KEEP SATISFIES APA NOTICE STANDARDS: RELEVANT REFERENCES IN NOTICES AND ORDERS**

Notice of Proposed Rulemaking (93-252) (released October 8, 1993)

"We seek comment on the interconnection right that should be afforded to commercial mobile service providers." ¶ 70

Second Report and Order (93-252) (released March 7, 1994)

"Although we requested comment on whether LECs should tariff interconnection rates for PCS providers only, our experience with cellular interconnection issues and our review of the comments have convinced us that our current system of individually negotiated contracts between the LECs and Part 22 providers warrants review and possible revision" (citing Comcast and Cox comments). ¶ 235

"[W]e intend to issue a Notice of Proposed Rulemaking requesting comment on whether we should require LECs to tariff all interconnection rates. . . . This Notice may also request comment on whether we should mandate specific tariff rate elements and, if so, how these rate elements should be structured, or whether we should apply alternative requirements on LECs that would ensure reasonable interconnection charges for CMRS providers." (emphasis added) ¶ 235 and n. 479.

Notice of Proposed Rulemaking and Notice of Inquiry (94-54) (released July 1, 1994) recognized that the Second Report and Order applied the principle of mutual compensation to interconnection between landline LECs and CMRS providers. ¶ 107

"In the CMRS proceeding, commenters expressed dissatisfaction with the current system of good faith negotiations, yet few embraced tariffing as the solution." (citing Cox and Comcast) ¶ 110

"[W]e ask interested parties to identify any changes to the existing system of negotiated contracts that might improve the current situation and address the concerns of CMRS providers or LECs." ¶ 118

**THE COMMENT/REPLY COMMENT RECORD SUPPORTS BILL AND KEEP**

While the Notice in CC 94-54 did not identify the bill and keep structure specifically, creating rules for reciprocal interconnection arrangements was the moving force behind the Notice. Bill and keep was highlighted as a solution in the opening comments filed on September 12, 1994 by Comcast, with economic support by Dr. Gerald Brock. Cox filed initial comments emphasizing the competitive significance of high LEC mutual compensation rates.

Others commented on the merits of bill and keep in reply comments filed October 13, 1994. For example:

NYNEX opposed Comcast's proposal that the Commission should change its recently-adopted mutual compensation policy to one of "sender-keep-all". It stated that the Commission's mutual compensation policy is designed to ensure that both LECs and CMRS providers receive compensation for the reasonable costs incurred in terminating traffic on each other's network. It then claimed that, under Comcast's proposal, these costs would not be recovered by either party.

Time Warner Telecommunications supported Comcast's suggestion that the Commission adopt a "bill and keep" or "sender keep all" LEC interconnection compensation model.

Pacific Bell/Nevada Bell opined that "[W]e do not believe mutual compensation is applicable to LECs with respect to interstate traffic."

Century Cellunet stated that the Commission should not require LEC/CMRS interconnection to be tariffed, but should reiterate that mutual compensation applies to both intrastate and interstate traffic. Mutual compensation has been the key for LEC/CMRS interconnection. It is a fundamental element of carrier status, reasonable interconnection and good faith negotiations.

General Communications, Inc. asserted that the Commission must mandate mutual compensation between the LEC and CMRS providers to create seamless ubiquitous networks.

Nextel stated that the Commission should require all interconnection agreements to reflect the principles of mutual compensation so that CMRS carriers receive compensation for terminating landline-originated calls.

Rochester Telephone Corporation claimed that Cox provided only vague and conclusory allegations that the current system is not working.

**EVEN AFTER THE COMMENT CYCLE CONCLUDED, NUMEROUS EX PARTES SUPPORTING BILL AND KEEP WERE FILED. THESE ARGUMENTS HAVE BEEN UNREBUTTED BY OTHER COMMENTERS.**

On March 21, 1995, Cox filed as an ex parte in CC 94-54 a study by Dr. Gerald Brock that examined LEC cost data on the incremental cost of terminating local traffic. This study established that the incremental cost, on average, is .2 cents per minute. To date no LEC has filed a rebuttal of this study.

On October 19, 1995 Cox placed in the record a list of arguments against bill and keep made by LECs in state proceedings. The list also set forth Cox's

responses to those arguments. Cox also submitted a state-by-state survey of interconnection policies which demonstrated that several states have adopted bill and keep on an interim basis for wireline competitors.

Again the LECs did not respond, with one exception. On October 25, GVNW Inc./Management, a group representing rural telcos, filed an ex parte expressing a generalized concern about the revenue impact of bill and keep on universal service support flows.

On October 11, 1995, Airtouch Communications filed an ex parte on CMRS interconnection supporting bill and keep as a viable alternative to existing arrangements.

On October 16, 1995 Cox filed an ex parte memorandum explaining the legal basis for the Commission's exclusive jurisdiction over CMRS interconnection arrangements.

On October 18, 1995 Comcast filed an ex parte with a case law explication of the Commission's exclusive jurisdiction over CMRS interconnection arrangements.

On October 17, 1995, the Rural Cellular Corporation and another rural cellular operator filed an ex parte supporting adoption of bill and keep.

On October 27, 1995, in GN Docket 93-252, AT&T Wireless filed an ex parte urging FCC clarification that the principle of mutual compensation applies to "intrastate" as well as "interstate" wireless telecommunications.

On November 20, 1995, CTIA filed an ex parte urging the Commission to incorporate "reciprocal termination" at a zero rate (bill and keep) as a bedrock rule for CMRS to LEC interconnection.